

STARKOVICH REPORTING SERVICES  
206.323.0919

## A P P E A R A N C E S

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Also Present: CHUCK HILLYARD  
JEANETTE WALLIS

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STARKOVICH REPORTING SERVICES  
(206) 323-0919

SEATTLE, WASHINGTON; THURSDAY, MAY 20, 2010

9:09 A.M.

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ELIZABETH ANN JACKSON, deponent herein, being first  
duly sworn on oath, was  
examined and testified as  
follows:

## E X A M I N A T I O N

BY MR. JUNGBAUER:

Q. Would you please state your full name for the record.

A. Elizabeth Ann Jackson.

Q. And what is your -- where do you live?

A. Spokane, Washington.

Q. What's your address?

A. 2701 East 36th Avenue, Unit A, Spokane, 99223.

Q. What is your position of employment?

A. Terminal manager.

Q. Where?

A. Spokane.

Q. How long have you been the terminal manager at  
Spokane?

A. Nine months.

## I N D E X

EXAMINATION BY: Page

Mr. Jungbauer ..... 4

\* \* \*

EXHIBITS FOR IDENTIFICATION:

Number Page

1 BNSF Northwest Division Safety Action  
Plan 2008 ..... 23

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Q. Before I go any further, have you ever had your  
deposition taken before?  
A. No.  
Q. Have you had a chance to talk to the lawyer,  
Mr. Montgomery, representing the BNSF about how this works?  
A. Yes.  
MR. MONTGOMERY: Object to the extent it calls  
for a response that evokes the attorney-client privilege, the  
last part of it about how it works.  
Q. Sometimes -- okay. I will try to explain some things  
for you. First of all, we try to be as relaxed as we can in  
here. The court reporter will be taking down what you say.  
About the only rules we have is we both can't talk at the same  
time. Is that understood?  
A. You and me?  
Q. Yes.  
A. Okay.  
Q. And secondly, if you don't understand some question --  
any question that I ask you, would you please let me know, and I  
will rephrase it or re-ask it. Is that understood?  
A. Yes.  
Q. Okay. And of course, if you need a break or whatever,  
just feel free to ask, and we will try to accommodate you.  
A. Okay.  
Q. All right? Good. What did you do to prepare for this

Page 6	Page 8
<p>1 deposition today?</p> <p>2 MR. MONTGOMERY: Objection; assumes facts not in</p> <p>3 evidence.</p> <p>4 Q. Did you review any documents?</p> <p>5 A. No.</p> <p>6 Q. Are you familiar at all with any of the circumstances</p> <p>7 of Ms. Wallis's accident?</p> <p>8 A. As far as what?</p> <p>9 Q. What, if any, information do you have?</p> <p>10 A. Regarding the injury --</p> <p>11 Q. Yes.</p> <p>12 A. -- itself?</p> <p>13 Q. Yes.</p> <p>14 A. Nothing.</p> <p>15 Q. Okay. What do you have information about?</p> <p>16 A. I don't have any information regarding --</p> <p>17 Q. The accident, itself?</p> <p>18 A. -- Jeanette Wallis's accident.</p> <p>19 Q. Okay. Prior to being a terminal manager in Spokane,</p> <p>20 what other job -- what's the most previous job to that, that you</p> <p>21 had?</p> <p>22 A. I was a manager of safety.</p> <p>23 Q. For what territory?</p> <p>24 A. For the Northwest Division.</p> <p>25 Q. What does the Northwest Division of BNSF encompass?</p>	<p>1 form.</p> <p>2 MR. JUNGBAUER: I will rephrase the question.</p> <p>3 Q. At the time of Ms. Wallis's accident and injury, the</p> <p>4 place and location where she was working was part of your safety</p> <p>5 territory, correct?</p> <p>6 MR. MONTGOMERY: Object to the form.</p> <p>7 A. Correct.</p> <p>8 Q. Okay. And prior to being manager of safety, what, if</p> <p>9 anything, did you do on the railroad?</p> <p>10 A. I was a manager of corridor operations in Fort Worth,</p> <p>11 Texas.</p> <p>12 Q. How long were you a manager of corridor operations?</p> <p>13 A. One year six months.</p> <p>14 Q. What did you do before that?</p> <p>15 A. I was a terminal trainmaster.</p> <p>16 Q. Where?</p> <p>17 A. Havre, Montana.</p> <p>18 Q. How long were you a terminal trainmaster in Havre?</p> <p>19 A. One year eight months.</p> <p>20 Q. Prior to being a terminal trainmaster, what did you</p> <p>21 do?</p> <p>22 A. Corporate manager -- corporate management trainee.</p> <p>23 Q. How long were you a corporate management trainee?</p> <p>24 A. One year.</p> <p>25 Q. Where did you do that?</p>
Page 7	Page 9
<p>1 A. It encompasses the states of Washington, Oregon,</p> <p>2 northern California, and part of Idaho.</p> <p>3 Q. How long were you the manager of safety of the</p> <p>4 Northwest Division?</p> <p>5 A. Approximately one year eight months.</p> <p>6 Q. Were you the manager of safety at the time of</p> <p>7 Ms. Wallis's accident?</p> <p>8 A. Yes.</p> <p>9 Q. So safety would have been in -- the territory where</p> <p>10 she was working would have been under your -- partially under</p> <p>11 your jurisdiction at that time?</p> <p>12 MR. MONTGOMERY: Object to the form.</p> <p>13 Q. You can answer.</p> <p>14 A. Can you say that again?</p> <p>15 Q. Yes. I will ask her to -- and by the way, sometimes</p> <p>16 when counsel for the railroad objects, unless he instructs you</p> <p>17 not to answer, you can still and will still answer the</p> <p>18 questions.</p> <p>19 MR. MONTGOMERY: If she can.</p> <p>20 Q. If you can. All right?</p> <p>21 A. Okay.</p> <p>22 Q. All right. So I will ask the court reporter to read</p> <p>23 back the question.</p> <p>24 (The question was read back. )</p> <p>25 MR. MONTGOMERY: That's why I objected to the</p>	<p>1 A. In Billings and Fort Worth.</p> <p>2 Q. Prior to being a corporate manager trainee, what were</p> <p>3 you, if anything, with the railroad?</p> <p>4 A. I was not with the railroad.</p> <p>5 Q. Okay. What did you do prior to working for the</p> <p>6 railroad?</p> <p>7 A. I went to school.</p> <p>8 Q. Where did you go?</p> <p>9 A. Texas A&amp;M.</p> <p>10 Q. What did you major in? Did you complete a college</p> <p>11 degree there?</p> <p>12 A. Yes.</p> <p>13 Q. And what is your degree?</p> <p>14 A. Business administration degree.</p> <p>15 Q. Okay. When you first went to work for BNSF as a</p> <p>16 management trainee, did you start in Fort Worth or did you start</p> <p>17 in Billings?</p> <p>18 A. I started in Fort Worth.</p> <p>19 Q. And who did you work with there?</p> <p>20 MR. MONTGOMERY: Object to the form.</p> <p>21 Q. Who was your boss?</p> <p>22 A. We were in training, so we worked with a lot of</p> <p>23 people.</p> <p>24 Q. How many people were in your class?</p> <p>25 A. I can't remember.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. Can you give me a guess?</p> <p>2 MR. MONTGOMERY: Don't guess.</p> <p>3 Q. Well, your best educated -- if you can tell me now, do</p> <p>4 you remember any other people in the class? You used the word</p> <p>5 "we."</p> <p>6 A. Yes, there were other people in my class.</p> <p>7 Q. Did you have formal classroom training?</p> <p>8 MR. MONTGOMERY: Object to the form.</p> <p>9 A. What do you mean by "formal classroom training"?</p> <p>10 Q. Well, did you ever get any manuals or written</p> <p>11 materials from the company when you were doing your management</p> <p>12 training?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What types of materials did they give you?</p> <p>15 A. I can't remember.</p> <p>16 Q. Do you have any of them still? Did you keep your</p> <p>17 materials?</p> <p>18 A. No.</p> <p>19 Q. What did you do with them?</p> <p>20 A. Between moves from Fort Worth to Billings and other</p> <p>21 subsequent moves, I don't have them anymore.</p> <p>22 Q. Okay. Who did you work with in Billings, Montana?</p> <p>23 A. Who did I work with?</p> <p>24 Q. Yes.</p> <p>25 MR. MONTGOMERY: Are you determined to make this</p>	<p style="text-align: right;">Page 12</p> <p>1 A. No. I don't believe so.</p> <p>2 Q. Did you have anything to do with rehabilitation?</p> <p>3 A. No.</p> <p>4 Q. Did you have anything to do with safety at that time?</p> <p>5 A. No.</p> <p>6 Q. What were your job duties as a trainee in Billings?</p> <p>7 A. Learning railroad.</p> <p>8 MR. MONTGOMERY: What did you say? Oh, learning</p> <p>9 railroad.</p> <p>10 THE WITNESS: Learning railroad.</p> <p>11 Q. Did you ever go out in yards and look at equipment?</p> <p>12 A. Yes.</p> <p>13 Q. And who took you out there to do that?</p> <p>14 A. There were numerous people that I worked with, and I</p> <p>15 cannot remember all of their names.</p> <p>16 Q. Okay. At some point in time, you get sent to Havre,</p> <p>17 Montana; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. It's a great place, isn't it? You don't have to</p> <p>20 say --</p> <p>21 MR. MONTGOMERY: You don't have to answer that.</p> <p>22 I will instruct you not to answer.</p> <p>23 Q. Was this a promotion, going to Havre, Montana?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And so you were a terminal trainmaster at</p>
<p style="text-align: right;">Page 11</p> <p>1 be a two-hour deposition even though she doesn't really know</p> <p>2 much about this case?</p> <p>3 MR. JUNGBAUER: I have a lot to ask her.</p> <p>4 MR. MONTGOMERY: Good. You get to it.</p> <p>5 MR. JUNGBAUER: I am trying.</p> <p>6 MR. MONTGOMERY: Who did she work with in</p> <p>7 Billings?</p> <p>8 MR. JUNGBAUER: What's that?</p> <p>9 MR. MONTGOMERY: It would be nice if you would</p> <p>10 get to what counts.</p> <p>11 MR. JUNGBAUER: We've got two hours until the</p> <p>12 next witness.</p> <p>13 MR. MONTGOMERY: That's my point, Bill. I don't</p> <p>14 think you need to use the two hours just because she is here.</p> <p>15 MR. JUNGBAUER: No, no.</p> <p>16 MR. MONTGOMERY: I have stated my position.</p> <p>17 Q. All right. Why don't you tell me who you worked with</p> <p>18 in Billings.</p> <p>19 A. I worked with Kelly Duryea (ph).</p> <p>20 Q. And who is Kelly?</p> <p>21 A. General director of transportation.</p> <p>22 Q. Okay. Who else?</p> <p>23 A. Anybody that was at their division headquarters.</p> <p>24 Q. Did you ever run into Tom Goetz over there? He is a</p> <p>25 rehab guy.</p>	<p style="text-align: right;">Page 13</p> <p>1 Havre?</p> <p>2 A. Yes.</p> <p>3 Q. What were your job duties?</p> <p>4 A. I worked with yardmasters and train crews regarding</p> <p>5 trains coming into and out of the terminal.</p> <p>6 Q. Did you have any responsibility for safety?</p> <p>7 MR. MONTGOMERY: Object to the form.</p> <p>8 A. Safety as far as what?</p> <p>9 Q. What I am -- I will tell you where I am going with</p> <p>10 this. At some point in time, you're going to end up being a</p> <p>11 manager of safety, and I am trying to see what, if any, safety</p> <p>12 training you got by BNSF prior to becoming manager of safety,</p> <p>13 okay?</p> <p>14 A. (Nodded.)</p> <p>15 Q. That's where I am going. So why don't you tell me --</p> <p>16 in fact, let's just do it that way. What, if any, training did</p> <p>17 Burlington Northern Santa Fe give to you regarding safety or</p> <p>18 accident prevention prior to you becoming a safety manager?</p> <p>19 A. Okay. Now that I understand.</p> <p>20 Q. Yes. That's where I am trying to go with all of this.</p> <p>21 A. Okay. When I accepted the position as manager of</p> <p>22 safety in Seattle, I was given some training in Fort Worth</p> <p>23 regarding -- regarding our Safety Action Plan; regarding -- I am</p> <p>24 trying to think of exactly what-all they taught us, but I can't</p> <p>25 remember all the specifics of what they taught us.</p>

Page 14	Page 16
<p>1 Q. Who was doing the teaching in Fort Worth for safety</p> <p>2 training for you?</p> <p>3 A. Well, there is a Safety Department, and there were</p> <p>4 multiple people in that department.</p> <p>5 Q. Who do you remember?</p> <p>6 A. Dan Rourke.</p> <p>7 Q. And what's his position?</p> <p>8 MR. MONTGOMERY: What was his position at the</p> <p>9 time?</p> <p>10 MR. JUNGBAUER: What was, yes.</p> <p>11 A. I don't know his -- I don't know his formal title.</p> <p>12 Q. Okay. But he was one of the instructors?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And he was in Fort Worth?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know where he is today?</p> <p>17 A. In Fort Worth.</p> <p>18 Q. Still?</p> <p>19 A. (Nodded.)</p> <p>20 Q. Do you know what his job is now?</p> <p>21 MR. MONTGOMERY: Assumes facts not in evidence.</p> <p>22 MR. JUNGBAUER: I am asking what she knows.</p> <p>23 MR. MONTGOMERY: I know. Assumes he has a job</p> <p>24 now.</p> <p>25 MR. JUNGBAUER: Okay.</p>	<p>1 Division Safety Action Plan? Fed. R. Evid. 402</p> <p>2 A. How so?</p> <p>3 Q. Did you do anything? Did you go to meetings? Did you</p> <p>4 talk to people? Did you help put the program together?</p> <p>5 MR. MONTGOMERY: Object to the form.</p> <p>6 A. No.</p> <p>7 Q. What, if any, function would you have with regard to a</p> <p>8 Safety Action Plan?</p> <p>9 MR. MONTGOMERY: Object to the form.</p> <p>10 A. I did the formatting.</p> <p>11 Q. What's that?</p> <p>12 A. I would make sure that all the fonts was the same</p> <p>13 size.</p> <p>14 Q. For typing it, you mean?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Did you write any of the items in the Safety</p> <p>17 Action Plan?</p> <p>18 A. No.</p> <p>19 Q. Who did the writing for the Safety Action Plan?</p> <p>20 MR. MONTGOMERY: Foundation.</p> <p>21 A. Fort Worth.</p> <p>22 Q. Okay. So safety people in Fort Worth?</p> <p>23 A. Correct.</p> <p>24 Q. Did Dan Rourke have any input into the Safety Action</p> <p>25 Plan?</p>
Page 15	Page 17
<p>1 Q. He is in Fort Worth. Is he working for the company?</p> <p>2 MR. MONTGOMERY: Foundation.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now we got that. What does he do for the</p> <p>5 company?</p> <p>6 A. He works in safety.</p> <p>7 Q. And what does he do in safety?</p> <p>8 A. I don't know his title, and I don't know all of his</p> <p>9 job roles and responsibilities.</p> <p>10 Q. Okay. Did he ever give you any written materials in</p> <p>11 your training for -- regarding safety at BNSF?</p> <p>12 A. Dan Rourke?</p> <p>13 Q. I could make it easier. Did anyone give you any</p> <p>14 written materials?</p> <p>15 A. And that's what I am trying to remember. You're</p> <p>16 given, yes, various material, but I don't remember specifically</p> <p>17 what I was given.</p> <p>18 Q. You have seen the Northwest Division Safety Action</p> <p>19 Plans for different years, I assume?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What is a Safety Action Plan?</p> <p>22 A. It is a plan that the division uses as our roadmap to</p> <p>23 various safety functions.</p> <p>24 Q. When you were the manager of safety for the Northwest</p> <p>25 Division, would you assist in putting together the Northwest</p>	<p>1 MR. MONTGOMERY: Objection; foundation.</p> <p>2 A. I don't know.</p> <p>3 Q. Did you ever -- when you were safety manager for the</p> <p>4 Northwest Division, did you ever talk to anybody in the Safety</p> <p>5 Department in Fort Worth?</p> <p>6 A. Yes.</p> <p>7 Q. Who did you talk to down there?</p> <p>8 A. I talked to numerous people.</p> <p>9 Q. Well, tell me who.</p> <p>10 A. I would talk to Dan Rourke.</p> <p>11 Q. Okay.</p> <p>12 A. I would talk to Gene Welander.</p> <p>13 Q. Do you remember what Mr. Welander's position was?</p> <p>14 A. No. I do not know his formal title.</p> <p>15 Q. Okay. But he is also -- is he still at Fort Worth,</p> <p>16 also?</p> <p>17 MR. MONTGOMERY: Foundation.</p> <p>18 A. No.</p> <p>19 Q. Did he retire?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. But did he retire after you left the manager</p> <p>22 position, or when did he retire?</p> <p>23 A. It was during my manager of safety position.</p> <p>24 Q. Okay. Do you know who took his place?</p> <p>25 A. Eric Weber.</p>



Page 18	Page 20
<p>1 Q. And is Mr. Weber still in Fort Worth?</p> <p>2 MR. MONTGOMERY: Foundation.</p> <p>3 A. Yes.</p> <p>4 Q. Anyone else you talked to down there besides</p> <p>5 Mr. Rourke, Mr. Welander, and Mr. Weber?</p> <p>6 A. Kevin Wilde.</p> <p>7 Q. That's one you've got to spell for me. Could you</p> <p>8 spell that.</p> <p>9 A. K-e-v-i-n.</p> <p>10 Q. That one, I could figure out.</p> <p>11 A. Wilde, W-i-l-d-e.</p> <p>12 Q. Okay. Do you know what his position of employment</p> <p>13 was?</p> <p>14 A. I don't know his formal title.</p> <p>15 Q. Okay. Anyone else besides Mr. Wilde in Fort Worth</p> <p>16 that you talked to as -- when you were manager of safety?</p> <p>17 A. Gosh, there were a lot of people.</p> <p>18 Q. Did they --</p> <p>19 A. I can't remember everybody.</p> <p>20 Q. Okay. When you were manager of safety, did the</p> <p>21 company ever call you in to meetings in Fort Worth?</p> <p>22 A. Regarding what?</p> <p>23 Q. Safety.</p> <p>24 A. What part of safety?</p> <p>25 Q. Did you ever travel to Fort Worth while you were</p>	<p>1 Q. Okay.</p> <p>2 A. Greg Gordley.</p> <p>3 Q. Would you spell "Gordley."</p> <p>4 A. G-o-r-d-l-e-y.</p> <p>5 Q. Okay.</p> <p>6 A. And Jeff Gion.</p> <p>7 Q. Would you spell Jeff's last name.</p> <p>8 A. G-i-o-n.</p> <p>9 Q. G-i-o-n, okay. Where was Mr. Brandenburg located?</p> <p>10 A. (No response.)</p> <p>11 Q. I can maybe shorten this up. Are these four so-called</p> <p>12 safety coordinators union members appointed by a general</p> <p>13 chairman?</p> <p>14 A. Yes, they are.</p> <p>15 Q. So they are union guys that are kind of working as</p> <p>16 liaisons with you?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Do you know which general chairman appointed</p> <p>19 them? Were they different unions or --</p> <p>20 A. I do not know.</p> <p>21 Q. Okay. Were they paid separately for this position?</p> <p>22 MR. MONTGOMERY: Form, foundation.</p> <p>23 Q. If you know.</p> <p>24 A. I don't know.</p> <p>25 Q. Other than the safety coordinators and the safety --</p>
Page 19	Page 21
<p>1 manager of safety to attend any meetings?</p> <p>2 A. Yes.</p> <p>3 Q. How often?</p> <p>4 A. Once a quarter.</p> <p>5 Q. Okay. And what would happen at these quarterly</p> <p>6 meetings?</p> <p>7 A. The quarterly meetings were a -- a safety summit</p> <p>8 meeting.</p> <p>9 Q. All right. Who was at the safety summit?</p> <p>10 A. Safety coordinators.</p> <p>11 Q. Is that different from the safety manager?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Who is the safety coordinator for your</p> <p>14 territory?</p> <p>15 MR. MONTGOMERY: Who was at the time?</p> <p>16 Q. Who was at the time?</p> <p>17 A. There were four.</p> <p>18 Q. And who were they?</p> <p>19 A. Steve Brandenburg.</p> <p>20 Q. Could you spell that.</p> <p>21 A. B-r-a-n-d-e-n-b-e-r-g (sic).</p> <p>22 Q. Okay.</p> <p>23 A. Terry Reddish.</p> <p>24 Q. Spell "Reddish," please.</p> <p>25 A. R-e-d-d-i-s-h.</p>	<p>1 did all the safety managers go to these safety summits?</p> <p>2 A. Yes.</p> <p>3 Q. And would there be one for each -- how many safety</p> <p>4 managers were there at that time?</p> <p>5 A. One for each division.</p> <p>6 Q. And how many divisions do you have -- did you have?</p> <p>7 MR. MONTGOMERY: You mean the railroad?</p> <p>8 MR. JUNGBAUER: Yes.</p> <p>9 A. Thirteen.</p> <p>10 Q. Yeah. Okay. And so then who would be in charge of</p> <p>11 the 13 safety managers at that time?</p> <p>12 A. Each safety manager worked with a general manager.</p> <p>13 Q. General manager?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And would that be an operating person, or is</p> <p>16 that a general manager of safety?</p> <p>17 A. That is a general manager of each division.</p> <p>18 Q. Okay. So like in the Northwest Division, who would</p> <p>19 you have been working with?</p> <p>20 A. Doug Jones.</p> <p>21 Q. Right. And he is an operations person, correct?</p> <p>22 A. I don't know if he is operations. He is over the</p> <p>23 entire division.</p> <p>24 Q. That's what I mean. Okay. So he runs the whole -- he</p> <p>25 runs the division, correct?</p>

Wallis v. BNSF

Elizabeth Jackson

May 20, 2010

Incomplete  
No  
question

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1 A. Correct.  
2 Q. Okay. And you're the top safety person in the  
3 Northwest Division at that time?  
4 MR. MONTGOMERY: Object to the form.  
5 A. I was the manager of safety working with Doug Jones.  
6 Q. Okay. Was there anybody employed by Burlington  
7 Northern Santa Fe assigned to the BNSF Northwest Division in the  
8 role of safety that's higher than you at that time?  
9 MR. MONTGOMERY: Object to the form.  
10 A. No.  
11 Q. Okay. Did you have anyone from Burlington Northern  
12 Santa Fe working for you in the Northwest Division when you were  
13 general manager of safety?  
14 A. No.  
15 Q. Okay. What were your job duties as general manager of  
16 safety?  
17 A. I was not general manager of safety.  
18 Q. Excuse me. Manager of safety. I apologize. You're  
19 right. As manager of safety, what was your -- what were your  
20 job duties?  
21 A. I would attend safety meetings and promote the Safety  
22 Action Plan.  
23 Q. Okay. Anything else?  
24 A. I would report injuries and incidents to Fort Worth.  
25 Q. Okay. Anything else?

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1 A. No.  
2 Q. Okay. I am going to show you -- we will mark this as  
3 Exhibit 1.  
4 (Exhibit 1 marked for  
5 identification.)  
6 Q. Okay. Showing you what's been marked as Exhibit 1.  
7 Could you tell us what that is.  
8 A. It says "BNSF Northwest Division Safety Action Plan  
9 2008."  
10 Q. And so there would be a Safety Action Plan for each  
11 calendar year?  
12 A. That is correct.  
13 Q. Okay. And is this the type of plan that you would  
14 have promoted, as you describe as part of your job duties as a  
15 manager of safety?  
16 A. Yes.  
17 Q. Can I see that, please.  
18 A. (Witness complies.)  
19 MR. MONTGOMERY: Sure be a lot easier if you  
20 brought copies for everybody, counselor.  
21 MR. JUNGBAUER: Off the record.  
22 (Discussion off the record.)  
23 MR. JUNGBAUER: Back on the record.  
24 Q. On the first page, it talks about -- of Exhibit --  
25 it's actually page 2 of Exhibit 1. There are safety -- division

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1 safety goals. Did you have division safety goals when you were  
2 safety manager?  
3 MR. MONTGOMERY: Object to the form.  
4 A. Yes.  
5 Q. Okay. And who came up with what the goals were for  
6 your -- for the Northwest Division, as far as safety goals?  
7 MR. MONTGOMERY: Objection; foundation.  
8 A. The general manager.  
9 Q. So that would be Doug Jones?  
10 A. Yes.  
11 Q. Okay. And according to page 2 of Exhibit 1, there is  
12 a reportable injury frequency ratio 1.65. Do you know what that  
13 means?  
14 A. Yes.  
15 Q. Why don't you tell us what that is.  
16 A. It is the number of injuries multiplied by man hours  
17 divided by 200,000.  
18 Q. Okay. And that's a ratio of injuries to workman hours  
19 that Mr. Jones and your Safety Action Plan was trying to set as  
20 a goal?  
21 MR. MONTGOMERY: Objection; foundation.  
22 A. Can you rephrase that question?  
23 Q. Sure. If I am looking at this Northwest Safety Goals,  
24 there is three different things listed there. The first one is  
25 reportable injury frequency ratio of 1.65. That's one of the

Fed. R.  
Evid.  
402Incomplete;  
No answer

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1 goals, correct, for that year?  
2 MR. MONTGOMERY: Object to the form, foundation.  
3 And for the record, you're a far cry at this point from whether  
4 or not BNSF is liable for her injuries and, if so, what her  
5 damages are.  
6 MR. JUNGBAUER: I am sure trying to find out  
7 what she does as a safety manager, and then we are going to get  
8 there.  
9 MR. MONTGOMERY: It would be delightful to get  
10 there.  
11 MR. JUNGBAUER: Huh?  
12 MR. MONTGOMERY: It would be delightful to get  
13 there.  
14 MR. JUNGBAUER: Come on, Tom. I have been  
15 through 14-hour depositions with you. I am only doing two with  
16 her.  
17 MR. MONTGOMERY: Okay.  
18 MR. JUNGBAUER: Okay.  
19 Q. So can you tell -- and then there is a second -- do  
20 you see that there is three goals listed here on the second  
21 page?  
22 A. Yes.  
23 Q. All right. And would you read what those three goals  
24 are for your Safety Action Plan.  
25 A. It states, "Northwest Division Safety Goals,

Fed. R.  
Evid. 402

7 (Pages 22 to 25)

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Elizabeth Jackson

May 20, 2010

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Fed. R.  
Evid.  
402

1 reportable injury frequency ratio of 1.65."  
 2 Q. Okay. What's the second thing; goal?  
 3 A. "Lost workdays/restricted severity ratio, 50."  
 4 Q. What's that?  
 5 A. It is calculated as the number of days an employee  
 6 misses work due to an injury, multiplied by man hours, divided  
 7 by 200,000.  
 8 Q. Okay. So is the number -- total number of workdays on  
 9 that ratio for the year -- is your goal 50 for 2008?  
 10 MR. MONTGOMERY: Object to the form, foundation.  
 11 A. No.  
 12 Q. What was the goal?  
 13 A. This is a ratio.  
 14 Q. Oh, it's a ratio, okay. And what's the third goal?  
 15 MR. MONTGOMERY: Object to the form.  
 16 A. "Reduce HF rail equipment incidents by 20 percent."  
 17 Q. And what are HF rail incidents?  
 18 A. "HF" means human factor.  
 19 Q. Uh-huh. That's a "Yes." Okay. And how were you  
 20 going to go about reducing human factor rail incidents by 20  
 21 percent?  
 22 MR. MONTGOMERY: Object to the form.  
 23 A. In my position, I did not reduce human factor rail  
 24 incidents.  
 25 Q. Okay. Is the plan set out to reduce human factor rail

Incomplete  
No  
question

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Fed. R.  
Evid. 402

1 incidents?  
 2 MR. MONTGOMERY: Object to the form, foundation.  
 3 A. The plan --  
 4 Q. The Safety Action Plan.  
 5 A. -- is not reducing human factor incidents.  
 6 Q. Isn't one of the three goals to reduce human factor  
 7 incidents?  
 8 A. Yes.  
 9 Q. Okay. So how was Burlington Northern Santa Fe going  
 10 to go about reducing human factor incidents under this Safety  
 11 Action Plan?  
 12 MR. MONTGOMERY: Object to the form, foundation.  
 13 A. I am not -- I am not -- I do not understand what you  
 14 are asking me.  
 15 Q. Okay. You were the safety manager for the Northwest  
 16 Division. What, if anything, did you do to reduce human factor  
 17 incidents on the railroad?  
 18 MR. MONTGOMERY: Object to the form.  
 19 A. I would work with leadership teams at different  
 20 various terminals to help them develop safety plans, actions  
 21 items (sic) in order to reduce their human factor incidents.  
 22 Q. Do you have any formal training in accident  
 23 prevention?  
 24 MR. MONTGOMERY: Object to the form.  
 25 A. What do you mean by "formal"?

Foundation

Fed. R.  
Evid. 402

1 Q. Do you have any training -- actual courses -- that you  
 2 have taken in accident prevention?  
 3 MR. MONTGOMERY: Same objection.  
 4 A. Again my question is: What do you mean by "formal"?  
 5 Q. Classroom training with books or materials.  
 6 A. Held by?  
 7 Q. Anyone. National Safety Council, BNSF, AAR, anybody.  
 8 A. I have not attended official training classes held by  
 9 the National Safety Council --  
 10 Q. Okay.  
 11 A. -- or the AAR.  
 12 Q. And for purposes of the record, "AAR" is what?  
 13 Association --  
 14 A. Association of --  
 15 Q. American Railroads?  
 16 A. That is correct.  
 17 Q. That's an industry association of all the major  
 18 railroads?  
 19 A. Correct.  
 20 Q. Including BNSF?  
 21 A. Correct.  
 22 Q. Okay. Have you attended any formalized accident  
 23 prevention training by anyone?  
 24 MR. MONTGOMERY: Object to the form.  
 25 A. No.

Fed. R.  
Evid.  
402

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1 Q. Okay. Would you agree, as a safety manager, part of  
 2 your job duty, to the best of your ability, would be to help to  
 3 prevent or reduce accidents on the railroad?  
 4 MR. MONTGOMERY: Object to the form.  
 5 A. Can you ask me that question again?  
 6 MR. JUNGBAUER: Would the court reporter read it  
 7 back, please.  
 8 (The last question was read.)  
 9 A. Yes.  
 10 Q. Okay. Is it true that safety managers are supposed to  
 11 study accidents to find the root causes of accidents so that  
 12 accidents can be prevented in the future?  
 13 MR. MONTGOMERY: Object to the form, incomplete  
 14 hypothetical, calls for speculation.  
 15 THE WITNESS: Can you read the first part of  
 16 that question?  
 17 (The last question was read.)  
 18 A. No.  
 19 Q. Okay. Does anyone at Burlington Northern Santa Fe in  
 20 the Safety Department or any other department do what is called  
 21 root cause analysis of accidents?  
 22 MR. MONTGOMERY: Foundation, form.  
 23 A. I do not know.  
 24 Q. Do you know what "root cause analysis" is?  
 25 MR. MONTGOMERY: Assumes facts not in evidence.

Lack of  
foundation

8 (Pages 26 to 29)



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Evid. 402  
Foundation

1 A. I am not sure how you mean "root cause analysis."  
 2 Q. Have you ever heard of "job safety analysis"?  
 3 A. No.  
 4 Q. So is it fair to say that no one taught you, prior to  
 5 you becoming safety manager for the Northwest Division of  
 6 Burlington Northern Santa Fe, what "job safety analysis" was?  
 7 MR. MONTGOMERY: Assumes facts not in evidence,  
 8 form.  
 9 A. Correct.  
 10 Q. Okay. Is it also true, then, that no one taught you,  
 11 prior to you becoming safety manager at Burlington Northern  
 12 Northwest Division, what "root cause analysis" is?  
 13 MR. MONTGOMERY: Assumes facts not in evidence,  
 14 form.  
 15 A. Correct.

16 Q. Did anyone teach you at -- prior to becoming safety  
 17 manager for the Northwest Division at Burlington Northern Santa  
 18 Fe, how to study and determine whether or not the training that  
 19 employees such as hostlers are getting is sufficient or  
 20 insufficient from a safety point of view?  
 21 MR. MONTGOMERY: Could you read that back? I am  
 22 sorry. I don't want to do spurious objections. Can I hear that  
 23 again?  
 24 (The last question was read.)  
 25 MR. MONTGOMERY: Thank you. Object to the form.

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1 A. Correct.  
 2 Q. Okay. I don't understand what you mean by "correct."  
 3 So did somebody teach you how to do that; how to --  
 4 A. No.  
 5 Q. Okay. If no one taught you how to study or determine  
 6 whether or not the training that hostlers and hostler helpers  
 7 got, whether it's sufficient enough to do a safe job, then how  
 8 do you know that it -- that safety is being promoted on your  
 9 railroad in your territory?  
 10 MR. MONTGOMERY: Object to the form. Assumes  
 11 facts not in evidence. To some extent, argumentative. Go  
 12 ahead.  
 13 A. That was not my job.  
 14 Q. Whose job was it from a safety point of view to check  
 15 and see whether or not the training that hostlers and hostler  
 16 helpers were getting was sufficient or not?  
 17 MR. MONTGOMERY: Objection; foundation, form.  
 18 A. I do not know.  
 19 Q. And the railroad -- your -- Burlington Northern Santa  
 20 Fe has reduced the number of train crews over the years. Are  
 21 you aware of that? They have gone from five people to four to  
 22 three to two? Have you learned that?  
 23 A. On a train?  
 24 Q. Yes.  
 25 A. The crew that runs the train?

1 Q. Yes.  
 2 A. Yes, I am aware of that.  
 3 Q. Okay. From a safety point of view, did anyone ever  
 4 teach you whether -- what the safety implications of reducing  
 5 crewmembers are?  
 6 MR. MONTGOMERY: Objection; assumes facts not in  
 7 evidence.  
 8 A. No.  
 9 Q. As a safety manager, did you ever study to see whether  
 10 or not there were enough people on crews for everyone to safely  
 11 do their job?  
 12 A. No.  
 13 Q. Do you -- as a safety manager in the BNSF Northwest  
 14 Division, did you do any type of auditing to see whether or not  
 15 crewmembers -- hostlers and hostler helpers, for instance, or  
 16 even train crewmembers -- had received enough training so that  
 17 they would know the radio rules and hand signal rules of GCOR?  
 18 MR. MONTGOMERY: Object to the form. Assumes  
 19 facts not in evidence.  
 20 A. No. I did not look at their training.  
 21 Q. Okay. Do you know what "GCOR" is?  
 22 A. Yes.  
 23 Q. What is GCOR?  
 24 A. General Code of Operating Rules.  
 25 Q. All right. Are you familiar with those rules?

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1 MR. MONTGOMERY: Object to the form.  
 2 Q. As a safety manager, were you familiar with those  
 3 rules?  
 4 MR. MONTGOMERY: Object to the form.  
 5 A. Yes.  
 6 Q. If -- under the GCOR rules, if an employee of BNSF is  
 7 operating -- a hostler is operating a set of engines, or a  
 8 consist, and that movement is being directed by a hostler helper  
 9 by hand signals, if the person that's giving the hand signals  
 10 goes out-of-sight, what, if anything, does that mean from a  
 11 safety point of view?  
 12 MR. MONTGOMERY: Object to the form, foundation,  
 13 incomplete hypothetical, calls for speculation.  
 14 A. That was a very long question with different scenarios  
 15 in there, so I did not follow the entire --  
 16 Q. Okay.  
 17 A. -- question.  
 18 Q. I will do it again. In fact, I am going to ask you to  
 19 assume that in Ms. Wallis's situation, that there are three  
 20 locomotives. And you know that's called a consist if they are  
 21 put together, correct?  
 22 A. Correct.  
 23 Q. Have you ever heard that term?  
 24 A. (Nodded.)  
 25 Q. So we have a consist of three locomotives, and these

9 (Pages 30 to 33)

<p style="text-align: right;">Page 34</p> <p>1 locomotives are being moved around in a rail yard by a hostler 2 and a hostler helper. You understand what those terms are? 3 A. (Nodded.) 4 MR. MONTGOMERY: Object to the form. 5 A. Yes. 6 Q. Okay. Now, if the hostler is operating, or 7 controlling, the locomotives, and the hostler helper is 8 directing the movement by hand signals, and if the hostler 9 helper for some reason cannot see -- if the hostler cannot see 10 the hostler helper who is giving directions, what, under the 11 rules, is the hostler supposed to do, if anything? 12 MR. MONTGOMERY: Object to the form, foundation, 13 incomplete hypothetical, calls for speculation. 14 A. In that situation, I do not know. There are multiple 15 factors that could have caused -- or be the resultant of a 16 hostler helper -- pardon me. Of the hostler not being able to 17 see the hostler helper. 18 Q. So from a safety point of view, do you think it's okay 19 for a train to keep moving if the person who is giving hand 20 signals goes out-of-view? 21 MR. MONTGOMERY: Object to the form, foundation, 22 incomplete hypothetical, calls for speculation. 23 A. I don't believe, in the situation that you presented 24 to me, that I can draw a full educated decision. 25 Q. Okay. What would -- if anything, would you instruct</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Wouldn't you consider the safety of your employees as 2 your job as a safety manager? 3 MR. MONTGOMERY: Object to the form. Assumes 4 facts -- 5 A. Can you ask -- 6 MR. MONTGOMERY: Go ahead. I am sorry. It 7 means I don't have to object again if you're going to ask him to 8 repeat it or rephrase it. 9 Q. Are the rules that the company has something just to 10 punish employees, or is it to make the railroad safer, or both? 11 MR. MONTGOMERY: Object to the form. Assumes 12 facts not in evidence. Certainly is argumentative. 13 A. The rules are in place not as a punishment. 14 Q. Okay. Are they there for safety? 15 MR. MONTGOMERY: Object to the form. 16 A. They are there as a guideline to instruct employees on 17 how to perform their various job tasks. 18 Q. From a safety point of view, do you agree with the 19 statement you just made that the safety rules are guidelines for 20 employees? 21 MR. MONTGOMERY: Object to the form, 22 mischaracterizes her earlier testimony, assumes facts not in 23 evidence, argumentative. 24 A. They are -- they are safety. Can you ask me that 25 again?</p>
<p style="text-align: right;">Page 35</p> <p>1 your people in the Northwest Division when you were the safety 2 manager when you'd go around and try to teach people about 3 safety, if that question came up -- for instance, if Sue Duff, 4 who is a hostler in your territory, were to have asked you, 5 "Hey, if I am operating an engine, and I am working with Jen 6 Wallis, and she is giving me hand signals, if she goes 7 out-of-view, what are my obligations," would you be able to tell 8 her? 9 MR. MONTGOMERY: Object to the form, assumes 10 facts not in evidence, calls for speculation, incomplete 11 hypothetical, and argumentative. 12 A. I do not know Sue Duff, and it was not my 13 responsibility, when I was going around talking about safety, to 14 discuss situations such as this. 15 Q. Whose responsibility in the Northwest Division was it 16 to go around and talk about safety of those -- of that type of 17 rule of whether to stop a movement or not stop a movement if 18 someone goes out of view? If it's not your responsibility from 19 safety, whose job was it? 20 MR. MONTGOMERY: Objection; foundation, form. 21 A. There are -- 22 MR. MONTGOMERY: Assumes facts not in evidence. 23 Sorry. It takes awhile to filter through it all. 24 A. There are two different departments: Rules and 25 Safety.</p>	<p style="text-align: right;">Page 37</p> <p>1 MR. JUNGBAUER: I will ask the court reporter to 2 read it back to you, please. 3 (The last question was read.) 4 MR. MONTGOMERY: Same objections. 5 A. The safety rules are guidelines for employees. The 6 General Code of Operating Rules is a guideline to perform their 7 job tasks. 8 Q. Are they rules or are they guidelines? Do you know 9 the difference? 10 MR. MONTGOMERY: Object to the form, foundation, 11 incomplete hypothetical. 12 A. They are rules. 13 Q. Okay. So they are not guidelines? 14 MR. MONTGOMERY: Object to the form. 15 A. Correct. 16 Q. All right. Now that we know that they are -- that the 17 GCOR rules are rules and not guidelines, what, if anything, did 18 you as a safety person do to make sure that your employees such 19 as hostlers and hostler helpers understood fully the rules so 20 they could comply with them? 21 MR. MONTGOMERY: Object to the form. Assumes 22 facts not in evidence. 23 A. It was not my job to ensure that employees knew and 24 conformed to the GCOR. 25 Q. Whose job was it?</p>

Argumentative;  
Fed. R.  
Evid.  
402-403;  
Not  
testimony

<p style="text-align: right;">Page 38</p> <p>1 MR. MONTGOMERY: Objection; foundation and asked</p> <p>2 and answered, as was the previous question.</p> <p>3 A. It would be those employees' supervisors.</p> <p>4 Q. From an overall safety point of view, if you're trying</p> <p>5 to reduce the number of accidents, wouldn't you as the overall</p> <p>6 safety manager for the whole Northwest Division want to make</p> <p>7 sure that the supervisors who are instructing hostlers, hostler</p> <p>8 helpers, or train crews are doing so in a good manner to make</p> <p>9 sure that all the employees fully understand the rules?</p> <p>10 MR. MONTGOMERY: Object to the form. Incomplete</p> <p>11 hypothetical. Answer if you can.</p> <p>12 A. It is the employees' supervisor to -- the employees'</p> <p>13 supervisor's responsibility to ensure that those employees know</p> <p>14 and understand the rules.</p> <p>15 Q. But the Safety Department doesn't monitor to see</p> <p>16 whether or not the supervisors are doing a good job at that?</p> <p>17 MR. MONTGOMERY: Object to the form.</p> <p>18 A. No.</p> <p>19 Q. What is oversight process in a Safety Action Plan?</p> <p>20 MR. MONTGOMERY: Do you want to show it to her;</p> <p>21 show her the context?</p> <p>22 MR. JUNGBAUER: Sure.</p> <p>23 Q. Page 6.</p> <p>24 MR. MONTGOMERY: Object to the form, and the</p> <p>25 document speaks for itself. Let's go back. I just want to flip</p>	<p style="text-align: right;">Page 40</p> <p>1 Wouldn't you as promoting the Safety Action Plan be promoting</p> <p>2 oversight of employees?</p> <p>3 MR. MONTGOMERY: Object to the form.</p> <p>4 A. No.</p> <p>5 Q. Okay. May I see that, please? Have you -- do you</p> <p>6 know what the Risk Identification Process and Work Practice</p> <p>7 Observation -- and that's where I was on page 6. Do you know</p> <p>8 what those two programs were, under the Safety Action Plan?</p> <p>9 A. Yes.</p> <p>10 Q. What are they?</p> <p>11 A. Risk Identification Process and Work Practice</p> <p>12 Observations are programs in which union employees work with</p> <p>13 other union employees to identify practices that may be unsafe.</p> <p>14 Q. So if a union employee such as my client, Ms. Wallis,</p> <p>15 were to think there were unsafe practices and were to tell</p> <p>16 management about that, what is management supposed to do if a</p> <p>17 union employee tells management there is possible unsafe</p> <p>18 practices out there?</p> <p>19 MR. MONTGOMERY: Object to the form, foundation,</p> <p>20 incomplete hypothetical, calls for speculation.</p> <p>21 A. In the situation that you provided me, that does not</p> <p>22 fall under the guidelines --</p> <p>23 Q. Okay.</p> <p>24 A. -- of either one of these.</p> <p>25 Q. So let's say that an employee such as Ms. Wallis</p>
<p style="text-align: right;">Page 39</p> <p>1 back.</p> <p>2 MR. JUNGBAUER: That's stuff about Canada. I</p> <p>3 didn't ask about that.</p> <p>4 MR. MONTGOMERY: Oh. See if -- okay. Same one?</p> <p>5 This is Exhibit 1?</p> <p>6 MR. JUNGBAUER: Yes.</p> <p>7 MR. MONTGOMERY: Okay. So you're asking her</p> <p>8 about Exhibit 6 --</p> <p>9 MR. JUNGBAUER: Page 6 of Exhibit 1.</p> <p>10 MR. MONTGOMERY: -- even though on page 4 is</p> <p>11 where the heading starts?</p> <p>12 MR. JUNGBAUER: She can go anywhere she wants in</p> <p>13 the whole exhibit. I want to know about the oversight process</p> <p>14 in the Safety Action Plan.</p> <p>15 MR. MONTGOMERY: All right. I will just object</p> <p>16 to the form.</p> <p>17 A. The oversight process is a section of the Safety</p> <p>18 Action Plan.</p> <p>19 Q. Okay. Well, when you testified earlier that part of</p> <p>20 your job as a safety manager was to promote the Safety Action</p> <p>21 Plan, you would also promote oversight, wouldn't you?</p> <p>22 A. Oversight of the Safety Action Plan or --</p> <p>23 Q. Yes.</p> <p>24 A. -- oversight of the oversight process?</p> <p>25 Q. Oversight of -- the oversight process of employees.</p>	<p style="text-align: right;">Page 41</p> <p>1 believes that some of the employees in the hostler training</p> <p>2 program are not getting enough training, and she tells people</p> <p>3 that. Is there anybody in the Safety Department that would look</p> <p>4 into that complaint?</p> <p>5 MR. MONTGOMERY: Object to the form, foundation,</p> <p>6 calls for speculation, incomplete hypothetical.</p> <p>7 A. It would only come to the Safety Department if we were</p> <p>8 notified.</p> <p>9 Q. By management?</p> <p>10 MR. MONTGOMERY: Same objections.</p> <p>11 A. Do you mean by her management?</p> <p>12 Q. Yes. Well, if Ms. Wallis complains to someone who is</p> <p>13 one of her bosses, whose job is it to let the Safety Department</p> <p>14 know of the problem?</p> <p>15 MR. MONTGOMERY: Object to the form, foundation,</p> <p>16 incomplete hypothetical, calls for speculation.</p> <p>17 A. As I previously stated, there is a Safety Department,</p> <p>18 and there is a Rules Department. Training and rules falls under</p> <p>19 the Rules Department, not under the Safety Department. So if</p> <p>20 Ms. Wallis was to raise a concern, as you stated, to her</p> <p>21 supervisor, the avenue would not be the Safety Department.</p> <p>22 Q. As a safety manager, do you think that you have any</p> <p>23 ability to listen to complaints of someone such as Ms. Wallis</p> <p>24 who says, "Hey, I don't think these people are getting enough</p> <p>25 training" -- hostlers -- or would you say, "Not my job; go talk</p>

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<p>1 to the Rules Department"?</p> <p>2 MR. MONTGOMERY: Objection; form, foundation,</p> <p>3 calls for speculation, incomplete hypothetical, and</p> <p>4 argumentative.</p> <p>5 A. So you're asking me if I have the ability to listen?</p> <p>6 Q. Do you have the ability to act, or would you -- is it</p> <p>7 really not your job to do anything about that if Ms. Wallis or</p> <p>8 her supervisor were to have said to you, "Hey, here is what</p> <p>9 happened. We have got a complaint about a possible lack of</p> <p>10 training, or insufficient training"? Doesn't the Safety</p> <p>11 Department have any way to say to the Rules Department, "Hey,</p> <p>12 guys, we want to look into this"?</p> <p>13 MR. MONTGOMERY: Object to the form, foundation,</p> <p>14 incomplete hypothetical, calls for speculation.</p> <p>15 A. In this completely hypothetical situation, if an</p> <p>16 employee came to me with a concern regarding training, I would</p> <p>17 help them get in touch with the Rules Department and the persons</p> <p>18 who are responsible for training.</p> <p>19 Q. Well, you have got a national Safety Department at</p> <p>20 BNSF, correct?</p> <p>21 MR. MONTGOMERY: Object to the form.</p> <p>22 Q. I mean, there is systemwide safety people such as</p> <p>23 Mr. Rourke, Mr. -- all the people down there in Fort Worth?</p> <p>24 A. Correct.</p> <p>25 Q. Does -- do the people on the system level, the safety</p>	<p>1 factor" as types of accidents, or types of causes of accidents,</p> <p>2 correct?</p> <p>3 MR. MONTGOMERY: I believe she was referring to</p> <p>4 a document. Object to the form.</p> <p>5 Q. You're familiar with the term "human factor</p> <p>6 accidents," correct?</p> <p>7 A. Correct.</p> <p>8 Q. All right. Isn't it true under federal FRA rules that</p> <p>9 if the railroad claims an accident is caused by human factors,</p> <p>10 that the railroad has an obligation to let the employee or</p> <p>11 employees who the railroad claims caused the human factor</p> <p>12 accident to notify them in writing so that they can respond</p> <p>13 under Form 6 -- FRA Form 6180?</p> <p>14 MR. MONTGOMERY: Object to the form and</p> <p>15 foundation.</p> <p>16 A. I believe so, but I am -- that's not my job.</p> <p>17 Q. Whose job is it at Burlington Northern Santa Fe to let</p> <p>18 employees know -- an employee or employees know -- that they are</p> <p>19 being listed with the government as having made -- caused a</p> <p>20 human factor accident so they can say, "Hey, it wasn't my fault,</p> <p>21 it was something else"?</p> <p>22 MR. MONTGOMERY: Object to the form, foundation,</p> <p>23 assumes facts not in evidence.</p> <p>24 A. That would be the reporting center in Fort Worth.</p> <p>25 Q. Okay. So there is someone who is supposed to let the</p>	<p>Fed. R. Evid. 402-403; Foundati on; Assumes facts not in evidence</p>
Page 43	Page 45	
<p>1 people, actually do any type of safety analysis to see whether</p> <p>2 the supervisors and managers at BNSF are running a safe railroad</p> <p>3 or not?</p> <p>4 MR. MONTGOMERY: Object to the form, foundation.</p> <p>5 A. That was not my job, and I do not know every job task</p> <p>6 that system safety employees do.</p> <p>7 Q. When you went to these quarterly meetings in Fort</p> <p>8 Worth, did anyone ever say at a quarterly meeting, "Hey, we in</p> <p>9 the Safety Department are really encouraging better training,</p> <p>10 better rules compliance out in -- out in the field"? Did</p> <p>11 anybody ever say that to you?</p> <p>12 MR. MONTGOMERY: Object to the form,</p> <p>13 argumentative.</p> <p>14 A. That is really broad.</p> <p>15 Q. Okay. Let me ask it a different way. Do you know of</p> <p>16 any accident prevention program that BNSF had while you were</p> <p>17 safety manager that would help reduce accidents caused by</p> <p>18 failure to comply with rules by a hostler?</p> <p>19 MR. MONTGOMERY: Object to the form, foundation,</p> <p>20 incomplete hypothetical.</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 MR. MONTGOMERY: Could we take a break soon?</p> <p>24 MR. JUNGBAUER: Yes. I will finish this.</p> <p>25 Q. Now, you know that -- you used the term earlier "human</p>	<p>1 employees know if they are claiming a human factor accident,</p> <p>2 correct?</p> <p>3 MR. MONTGOMERY: Object to the form, foundation,</p> <p>4 assumes facts not in evidence.</p> <p>5 A. This is not my area of expertise.</p> <p>6 Q. From a safety point of view, how do you know if an</p> <p>7 accident is caused by human factors or not?</p> <p>8 MR. MONTGOMERY: Object to the form, foundation,</p> <p>9 assumes facts not in evidence, calls for speculation, and it</p> <p>10 would be nice to take a break soon.</p> <p>11 MR. JUNGBAUER: As soon as she answers this</p> <p>12 question.</p> <p>13 A. Can you ask me that question again?</p> <p>14 (The last question was read.)</p> <p>15 MR. MONTGOMERY: Same objections, of course.</p> <p>16 A. It was not my job to decide whether an accident was</p> <p>17 caused by human factor.</p> <p>18 Q. Who does decide that?</p> <p>19 A. Whoever the investigating officer is.</p> <p>20 Q. Are you aware that management personnel at BNSF are</p> <p>21 given bonuses if their accident ratio comes within the goals of</p> <p>22 the Safety Action Plan or not?</p> <p>23 MR. MONTGOMERY: Object to the form, foundation.</p> <p>24 Q. It's called an incentive -- ICP bonus. Have you ever</p> <p>25 heard of that?</p>	<p>Assumes facts not in evidence Incomplete hypothetical</p>



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	<div>Page 46</div> <div>1 MR. MONTGOMERY: Object to the form, foundation, 2 assumes facts not in evidence. 3 A. You asked me several questions. 4 Q. Yes. Do you know what an ICP bonus is? 5 A. Yes. 6 Q. And isn't part of the ICP bonus based on percentage of 7 reportable accidents and injuries? 8 MR. MONTGOMERY: Objection; foundation. 9 A. There is a safety piece. 10 Q. It's about 15 percent, isn't it? 11 MR. MONTGOMERY: Objection; foundation. 12 A. I don't know. 13 Q. Okay. But there is a component of all managers' 14 bonuses based on personal injuries statistics, correct? 15 MR. MONTGOMERY: Objection; asked and answered, 16 form, foundation. 17 A. I believe so. 18 Q. If you're trying -- 19 MR. JUNGBAUER: Here is what -- and I will try 20 and end after this one, counsel, for a break. 21 Q. If you're trying to promote safety at BNSF, how do you 22 know that your supervisors and managers are not cooking the 23 books to get a bonus if part of their bonus is based on those 24 statistics? 25 MR. MONTGOMERY: Object to the form, foundation,</div>	
Fed. R. Evid. 402		
Foundation		
	<div>Page 47</div> <div>1 incomplete hypothetical, argumentative. 2 A. I don't know how to answer. How would I as Liz 3 Jackson know that a manager is cooking the books? 4 Q. No. How would you as Liz Jackson, Safety Manager for 5 the Northwest Division when you were, know whether or not your 6 books are being cooked, as far as accident reporting, if there 7 are financial incentives that affect the bonuses of these 8 supervisors who were filling out these reports? 9 MR. MONTGOMERY: Object to the form, foundation, 10 asked and answered, assumes facts not in evidence. Did I say 11 "argumentative"? And argumentative. Can we get on -- 12 MR. JUNGBAUER: As soon as she answers the 13 question. 14 MR. MONTGOMERY: It's not an answerable 15 question. 16 MR. JUNGBAUER: It is. She can say she knows, 17 she doesn't know, or doesn't care, whatever she wants to say. 18 A. I don't know how to answer that question. 19 MR. JUNGBAUER: Okay. We can take a break. 20 (Short recess.) 21 MR. JUNGBAUER: Back on the record. 22 Q. During the break, I had a chance to -- 23 MR. MONTGOMERY: Is this a 15-round match? 24 MR. JUNGBAUER: I intend to. 25 MR. MONTGOMERY: Sorry to interrupt.</div>	
Fed. R. Evid. 402-403; Argumentative		
	<div>Page 48</div> <div>1 MR. JUNGBAUER: No problem. 2 Q. During the break, I took a look at Exhibit 1. And on 3 page 9, on the "Oversight Process Continued," it's got a bunch 4 of jobs that a division manager of safety is supposed to do. Do 5 you see those up on top? 6 MR. MONTGOMERY: I am going to object to the 7 form. Object to the extent that it mischaracterizes the 8 document which speaks for itself. 9 Q. Okay. So looking at page 9 of Exhibit 1. Would you 10 tell me what the -- first of all, are the items listed under 11 "Division Manager of Safety" some of the jobs that you would 12 have to do under the Safety Action Plan? 13 A. Yes. 14 Q. Why don't you read those off for me one-at-a-time, and 15 we will discuss them. What's the first one? 16 A. "Utilize the 'Operations Testing Division Reporting 17 Tool' in the auditing and certification of the division testing 18 program." 19 Q. All right. Did you use those to comply with the 20 Safety Action Plan as the division safety manager? 21 MR. MONTGOMERY: Object to the form. 22 A. Did I use Operations Testing Division Reporting Tool? 23 Q. Yeah. 24 A. Yes, I did. 25 Q. How did you do it?</div>	No testimony Fed. R. Evid. 402-403
		Exhibit not Provided
		Fed. R. Evid. 402
		Argumentative
	<div>Page 49</div> <div>1 A. The Division Reporting Tool is a computer program 2 that -- that runs data on officers testing. 3 Q. Okay. Now, is this testing of the officers or 4 officers' efficiency testing of employees that you're monitoring 5 with this computer program? 6 A. This is officers' operations testing. 7 Q. Of employees? 8 A. Of employees. 9 Q. Okay. So before, when I was asking you, as part of 10 your safety duties, don't you have to find out if supervisors or 11 officers are testing employees to see if they are complying with 12 the rules, under page 9 here, the very first thing, that would 13 be one of the things you're supposed to monitor, isn't it? 14 MR. MONTGOMERY: Object to the form. 15 A. I am to monitor if they did perform their operations 16 testing. 17 Q. So what you're doing is you're -- as part of your 18 safety job, you're supposed to be seeing if the supervisors are 19 out seeing if employees are -- through operations testing, are 20 following the rules, correct? 21 MR. MONTGOMERY: Object to the form. For the 22 record, Mr. Jungbauer, again, this is very simple FELA case, 23 whether or not Mr. Wallis was injured by BNSF negligence, and if 24 so, her damages. And I believe this is well afield of that, but 25 go ahead.</div>	

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 MR. JUNGBAUER: I will tell you what I am 2 asking. I am asking whether or not, as manager of safety, part 3 of her job, according to Exhibit 1, was to go check and see 4 whether the supervisors of Sue Duff were doing operations 5 testing on Sue Duff to see if she understood the rules of when 6 she is supposed to stop her engines. 7 Q. That's what I am asking you. Isn't that your job 8 under that? 9 MR. MONTGOMERY: Boy. Object to the form. 10 MR. JUNGBAUER: That's about as straight as I 11 can make it, Tom. 12 MR. MONTGOMERY: Incomplete hypothetical. You 13 can save a lot of time at these deps by just getting to it. 14 MR. JUNGBAUER: That's right to it. That's 15 right there. 16 MR. MONTGOMERY: There you go. 17 Q. Do you understand my question? 18 A. I understand your question. However, my job was to 19 use the Division Reporting Tool in order to pull this 20 information together. It is not to verify the quality of 21 operations testing. That is the job of those officers 22 supervising. Not mine. 23 Q. As a safety manager, do you know one way or the other 24 whether or not, from the monitoring that you did, whether or not 25 a hostler such as Sue Duff was ever tested to see whether she</p>	<p style="text-align: right;">Page 52</p> <p>1 A. 5.3.3, "Signal Disappearance," states, "If a person 2 disappears who is giving the signal to back or shove a train 3 engine or car or the light being used disappears, the employee 4 must stop movement unless employee on leading car controls the 5 air brakes." 6 Q. Okay. And that's -- you have to know that rule among 7 other rules, correct? 8 MR. MONTGOMERY: Object to the form. I will 9 point out this is a 2010 edition of the GCOR, but go ahead and 10 answer. 11 Q. That rule is the same rule back in -- at the time you 12 were safety manager, too, wasn't it? 13 MR. MONTGOMERY: Objection; foundation. 14 A. (No response.) 15 Q. Hasn't that always been the rule as long as you've 16 been taught, that if a person giving hand signals disappears 17 from view, that that's a stop? 18 MR. MONTGOMERY: Objection; foundation, form. 19 A. As far as to my knowledge, this is the rule in the 20 GCOR, and I believe it was the same in -- or, during my tenure 21 as a manager of safety. 22 Q. As a manager of safety, did you do anything ever to 23 check whether or not employees that were operating locomotives 24 complied with that rule? 25 A. No.</p>
<p style="text-align: right;">Page 51</p> <p>1 understood that if an employee giving hand signals to her on 2 moving locomotives disappears from sight, whether that's an 3 absolute stop under GCOR or not? 4 MR. MONTGOMERY: Object to the form, incomplete 5 hypothetical; to some extent, calls for speculation. 6 A. That was not my job. 7 MR. MONTGOMERY: Foundation. 8 Q. And so even though somebody says on this computer 9 program, "Hey, we did operations testing," do you know what rule 10 or rules they were testing on? Can you check that out to see if 11 they ever checked on this 12 stop-when-someone-disappears-from-sight rule? 13 MR. MONTGOMERY: You're going to have to hear 14 this question read back again, I am sorry, what he is telling 15 you. 16 Q. All right. I am going to show you GCOR. You're 17 supposed to know that, right? 18 MR. MONTGOMERY: Object to the form. 19 Q. It's part of your job to know GCOR, correct? 20 MR. MONTGOMERY: Object to the form. Which job? 21 Q. Any job at -- that you have had, either as safety 22 manager or your current job, you have to know GCOR, correct? 23 A. When I -- yes. 24 Q. All right. And I am going to show you Rule 5.3.3, 25 "Signal Disappearance." Would you read that out loud, please.</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. MONTGOMERY: Give me a second. Continue 2 pausing, please. I would have interjected an objection there. 3 Q. As manager of safety, did you ever do any checking to 4 see if supervisors who did operations testing or efficiency 5 testing of employees checked it to see if Rule 5.3.3 was being 6 complied with? 7 A. Can you restate that? 8 Q. Yes. Did you do anything as manager of safety to 9 check to see if the supervisors who were doing testing of 10 employees ever tested their employees on Rule 5.3.3? 11 MR. MONTGOMERY: Asked and answered. 12 A. No. 13 Q. Can I see both of those again? 14 A. Uh-huh. 15 Q. The second duty of the division manager of safety on 16 page 9 of Exhibit 1; would you read that out loud, please. 17 A. No. 2 states, "Provide a monthly OPT certification 18 report to the Regional Vice President, Division General Manager, 19 Senior Manager Field Safety. This certification report will 20 include items listed in the Management Instructions and LOL 21 monthly certification." 22 Q. What is that? I don't know what those letters stand 23 for. 24 A. What is what? 25 Q. Tell me what you're providing.</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. MONTGOMERY: Object to the form.</p> <p>2 A. "OPT" stands for operations testing.</p> <p>3 Q. Okay.</p> <p>4 A. Monthly, I would provide to those leaders a report</p> <p>5 that -- that summarizes all of the operations testing data for</p> <p>6 that month.</p> <p>7 Q. Okay. So you'd write a report to even one of the vice</p> <p>8 presidents of the railroad?</p> <p>9 A. Yes.</p> <p>10 Q. And you'd monthly tell that vice president about the</p> <p>11 types of testing of employees, operations testing that's going</p> <p>12 on?</p> <p>13 A. It was in a summarized form. So I would perform -- I</p> <p>14 would provide summary information of operations tests that were</p> <p>15 completed for the previous month.</p> <p>16 Q. What would be in this summary that you would write?</p> <p>17 A. It was -- it was -- it was general information about</p> <p>18 how many tests had been provided; how many failures there had</p> <p>19 been.</p> <p>20 Q. Were there quotas ever in some areas where you got to</p> <p>21 do a certain number of tests, and you've got to have a certain</p> <p>22 number of failures?</p> <p>23 MR. MONTGOMERY: Object to the form, foundation;</p> <p>24 to some extent, argumentative.</p> <p>25 A. There are two different questions --</p>	<p style="text-align: right;">Page 56</p> <p>1 also included.</p> <p>2 A. "Provide training, maintenance and support for</p> <p>3 superintendents and middle managers in the reporting and</p> <p>4 measurement process of the respective testing programs."</p> <p>5 Q. Did you provide any training to these middle managers</p> <p>6 on how to do testing?</p> <p>7 MR. MONTGOMERY: You're talking about ops</p> <p>8 testing?</p> <p>9 MR. JUNGBAUER: Yes.</p> <p>10 A. No, I did not -- I did not provide training for</p> <p>11 superintendents and middle managers regarding operations</p> <p>12 testing. However, I did, as No. 3 states, provide training,</p> <p>13 maintenance and support in the reporting and measurement process</p> <p>14 of the respective testing programs.</p> <p>15 Q. Okay. How did you measure their testing? How did you</p> <p>16 train them to do that?</p> <p>17 A. In this context in No. 3, reporting and measurement</p> <p>18 process is in regards to using the computer program to enter</p> <p>19 their ops testing.</p> <p>20 Q. So again, they can tell -- are they just telling you</p> <p>21 they have done a certain number of tests, or are you</p> <p>22 qualitatively looking at if they are doing the tests correctly</p> <p>23 or not? Do you -- as a safety manager, do you have any idea if</p> <p>24 these people that were doing their operations testings were</p> <p>25 correctly doing the testing?</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. Yes.</p> <p>2 A. -- in that question.</p> <p>3 Q. Are there quotas, to your knowledge?</p> <p>4 MR. MONTGOMERY: Object to the form.</p> <p>5 Q. Have there ever been quotas used for this type of</p> <p>6 testing?</p> <p>7 MR. MONTGOMERY: Object to the form. And again,</p> <p>8 for the record, you're so far afield of a very simple FELA case.</p> <p>9 A. There were no quotas on failure rates.</p> <p>10 Q. Have you ever heard of a team from Texas coming in and</p> <p>11 auditing someone in the Northwest Division because there weren't</p> <p>12 enough failures?</p> <p>13 A. No.</p> <p>14 Q. It's never happened?</p> <p>15 MR. MONTGOMERY: Objection. That's a different</p> <p>16 question. Objection; foundation and form and argumentative.</p> <p>17 A. To my knowledge, no one from Fort Worth was called out</p> <p>18 to verify testing data.</p> <p>19 Q. Has someone been called out from anywhere else to</p> <p>20 verify testing data in the Northwest Division?</p> <p>21 MR. MONTGOMERY: Form and foundation.</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. Okay. Can I see the form again, please?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Number 3; would you read that, what your job duties</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. MONTGOMERY: Object to the form, asked and</p> <p>2 answered.</p> <p>3 A. As I previously stated, I summarize the information.</p> <p>4 I did not oversee the quality of the operations testing.</p> <p>5 Q. Okay. Can I see the sheet?</p> <p>6 A. (Witness complies.)</p> <p>7 Q. Number 4.</p> <p>8 A. Number 4 states, "Assist in the production and</p> <p>9 analysis of all 72 hour reports, corrective action plans, and</p> <p>10 the monthly Management Oversight Certification Program."</p> <p>11 Q. What did you do to comply with that?</p> <p>12 A. That is very broad. You mean in respect to --</p> <p>13 Q. Analysis. How did you analyze accidents?</p> <p>14 A. Number --</p> <p>15 MR. MONTGOMERY: Object; assumes facts not in</p> <p>16 evidence, form. Go ahead.</p> <p>17 A. Number 4 states that I would assist in the production</p> <p>18 and analysis of all 72 hour reports.</p> <p>19 Q. Okay.</p> <p>20 A. That is not accidents.</p> <p>21 Q. Okay. What's a 72 hour report?</p> <p>22 A. A 72 hour report is a report generated by the officer</p> <p>23 when a specific incident occurs, in regards to rail equipment</p> <p>24 incidents.</p> <p>25 Q. Does it have anything to do with personal injury</p>



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1 reporting?  
2 A. No.  
3 Q. If a locomotive -- or, three locomotives strike  
4 another locomotive, isn't that supposed to be reported on the 72  
5 hour report?  
6 MR. MONTGOMERY: Object to the form, foundation.  
7 Q. That's equipment striking equipment.  
8 MR. MONTGOMERY: Object to the form, foundation,  
9 incomplete hypothetical.  
10 A. No. That would not cause a 72 hour report to be  
11 generated.  
12 Q. Why not?

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13 MR. MONTGOMERY: Object to the form.  
14 Q. Excuse me. What's the criteria for a 72 hour report  
15 to be generated?  
16 MR. MONTGOMERY: Object to the form.  
17 A. A 72 hour report would be generated if there was a --  
18 a significant human factor incident such as a main line  
19 authority violation or a eight-deadly violation.  
20 Q. A what?  
21 A. Eight-deadly violation.  
22 Q. Like the eight deadly sins? What's "eight-deadly"?  
23 MR. MONTGOMERY: "Eight" space "deadly," I  
24 believe.  
25 Q. Eight deadly? You mean like someone --

1 them?  
2 MR. MONTGOMERY: Object to the form,  
3 argumentative. Is it --  
4 MR. JUNGBAUER: I am just verifying that the  
5 manager of safety doesn't know the eight most significant  
6 violations there are.  
7 Q. You only know five of them, right?  
8 MR. MONTGOMERY: Object to the form, asked and  
9 answered, argumentative.  
10 A. At this time, I cannot remember the other three.

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11 Q. Okay. Well, let's talk about the ones you do  
12 remember. Riding equipment to a joint; what does that mean?  
13 A. It means that if an employee was riding the side of a  
14 boxcar, that they cannot couple into other equipment while they  
15 are riding the side of that boxcar.  
16 Q. Okay. And if there was -- if you had knowledge -- and  
17 does that also apply to riding engines? That you don't ride on  
18 the side of an engine when -- to actually couple onto another  
19 engine? That that's a violation?  
20 MR. MONTGOMERY: Object to the form, foundation,  
21 incomplete hypothetical, calls for speculation.  
22 Q. You said "riding equipment." Doesn't that include a  
23 locomotive?  
24 MR. MONTGOMERY: Same objections.  
25 A. Yes. A locomotive is a piece of equipment.

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1 MR. MONTGOMERY: Eight -- eight deadly. Eight  
2 deadly.  
3 Q. All right. So if you have got a main line authority  
4 violation or a deadly, like someone getting killed? Is that  
5 what you said?  
6 A. No. "Eight" as in the letter -- or, as in the number  
7 "eight" --  
8 Q. Number "eight"?  
9 A. -- deadly.  
10 Q. What is a number "eight" deadly violation?  
11 A. There are eight -- eight --  
12 MR. MONTGOMERY: Go ahead. And by the way, what  
13 this has to do with Ms. Wallis's --  
14 MR. JUNGBAUER: I will show you in a second. I  
15 am getting there.  
16 Q. Come on.  
17 MR. MONTGOMERY: Please do.  
18 A. There are eight deadly rules violations that are  
19 considered significant rules violations.  
20 Q. What are they?  
21 A. Riding equipment to a joint. Shoving. On and off  
22 equipment. Running in the performance of duties. Foul of  
23 tracks. And I can't remember the other three right now.  
24 Q. So there is three more eight-deadly violations, and  
25 even though you were the manager of safety, you can't remember

1 Q. Okay. So if Ms. Wallis was on a locomotive, and she  
2 is riding that locomotive, and for some reason, the person  
3 that's running those locomotives decides not to stop the  
4 locomotives before coupling onto another locomotive, she has got  
5 to get off that locomotive, right?  
6 MR. MONTGOMERY: Object to the form, foundation,  
7 calls for speculation, incomplete hypothetical.  
8 A. If -- if an employee was riding the side of a  
9 locomotive -- in our made-up scenario, if an employee was riding  
10 the side of a locomotive, yes, they should stop the locomotive,  
11 dismount, and make the coupling.  
12 Q. Okay. Because they are not allowed to ride the  
13 locomotive to the coupling, correct?  
14 MR. MONTGOMERY: Object to the form, incomplete  
15 hypothetical, calls for speculation.  
16 A. With the circumstances that I am presented, that is  
17 correct.  
18 Q. Okay.  
19 A. But there are other circumstances.  
20 Q. Well, here is one of the questions I have got for you.  
21 If you're supposed to investigate eight deadly rules, and  
22 Ms. Wallis's accident involves riding the side of a locomotive  
23 that collides with another locomotive in coupling and she gets  
24 off, doesn't that sound like facts that you should investigate  
25 as one of the potential eight-deadly rule violations maybe by

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Calls for  
speculation

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in  
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evidence

Page 62	Assumes facts not in evidence Page 64
<p>1 the hostler --</p> <p>2 MR. MONTGOMERY: Objection.</p> <p>3 Q. -- for not stopping the train?</p> <p>4 MR. MONTGOMERY: Object to the form, foundation,</p> <p>5 assumes facts not in evidence, incomplete hypothetical, calls</p> <p>6 for speculation.</p> <p>7 A. It was not my job as manager of safety to investigate</p> <p>8 an eight-deadly.</p> <p>9 Q. All right. Did you do a 72 hour rule follow-up as</p> <p>10 required by Exhibit 1 for Ms. Wallis's accident, yes or no?</p> <p>11 A. Exhibit --</p> <p>12 MR. MONTGOMERY: Hang on. Thank you. I think</p> <p>13 your answer will cover my objection, but object to the form, and</p> <p>14 assumes facts not in evidence, mischaracterizes prior testimony,</p> <p>15 and the document speaks for itself. Go ahead.</p> <p>16 THE WITNESS: Sorry. Can you repeat the</p> <p>17 question.</p> <p>18 (The last question was read.)</p>	<p>1 present, then it would trigger a 72 hour report.</p> <p>2 Q. What's the second -- the second thing you talked</p> <p>3 about, the eight deadly rules? What's this about shoving? What</p> <p>4 does shoving have to do with an eight-deadly rules violation?</p> <p>5 MR. MONTGOMERY: Object to the extent it</p> <p>6 mischaracterizes earlier testimony, form.</p> <p>7 A. Shoving is one of the eight-deadly rules violations.</p> <p>8 Q. Shoving, itself, is okay to do; it just has to be done</p> <p>9 in a correct manner, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. All right. So if the locomotive consist is shoving,</p> <p>12 wouldn't that also be a potential triggering event that would</p> <p>13 cause a 72 hour review in Ms. Wallis's case?</p> <p>14 MR. MONTGOMERY: Object to the form, foundation,</p> <p>15 incomplete hypothetical.</p> <p>16 A. I am not familiar with Mrs. Wallis's case and whether</p> <p>17 the locomotives were shoving or how they were being moved, so</p> <p>18 I --</p>
<p>19 A. No. I am not required to do a 72 hour report.</p> <p>20 Exhibit 1 states that I will assist in the production and</p> <p>21 analysis of all 72 hour reports.</p> <p>22 Q. Okay.</p> <p>23 A. Not complete them.</p> <p>24 Q. Did you assist in the analysis of the report regarding</p> <p>25 Ms. Wallis's accident as required by Rule 1 since riding on</p>	<p>19 Q. If the locomotives were being shoved, wouldn't that be</p> <p>20 a potential triggering event for a 72 hour safety review?</p> <p>21 MR. MONTGOMERY: Object to the form, calls for</p> <p>22 speculation, incomplete hypothetical, assumes facts not in</p> <p>23 evidence. Strike that last objection. I am sorry.</p> <p>24 A. I do not know if the locomotives were being shoved.</p> <p>25 Q. I am asking -- okay. In any situation, whether it's</p>
Page 63	Page 65
<p>1 equipment was involved, one of the eight deadly rules?</p> <p>2 MR. MONTGOMERY: Object to the form. Assumes</p> <p>3 facts not in evidence.</p> <p>4 A. I would analyze these reports, not the incident.</p> <p>5 Q. Did you analyze the report in Ms. Wallis's accident?</p> <p>6 MR. MONTGOMERY: Objection; assumes facts not in</p> <p>7 evidence.</p> <p>8 A. I would analyze the report for completeness; for</p> <p>9 completeness and corrective action, follow-up, et cetera.</p> <p>10 Q. Did you do that with regard to Ms. Wallis's situation?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what did you -- did you conclude that any</p> <p>13 corrective action needed to be taken, after analyzing that</p> <p>14 accident?</p> <p>15 MR. MONTGOMERY: Objection to form. Assumes</p> <p>16 facts not in evidence.</p> <p>17 A. Actually, I need to state something. I -- I can't</p> <p>18 remember if there was a 72 hour report generated on specifically</p> <p>19 Jeanette Wallis's case because as I previously stated, injuries</p> <p>20 were not a -- a triggering event for a 72 hour report.</p> <p>21 Q. Okay. But one of the -- the first thing you said, the</p> <p>22 eight-deadly rules violations are triggering events, correct?</p> <p>23 A. If -- if those "eight-deadly's" are discovered by an</p> <p>24 outside test team such as the test team you referred to earlier</p> <p>25 from Fort Worth, if they discovered that without an officer</p>	<p>1 Ms. Wallis's case or not, if you have got three locomotives in a</p> <p>2 consist, and if the locomotives are being shoved -- not pulling,</p> <p>3 shoving -- that would be a potential triggering event if an</p> <p>4 accident occurs, under the 72 hour reporting rule, correct?</p> <p>5 MR. MONTGOMERY: Object to the form, calls for</p> <p>6 speculation, incomplete hypothetical.</p> <p>7 A. Moving locomotives in a reverse move is not a shoving</p> <p>8 move. That is a reverse movement.</p> <p>9 Q. What is -- does it depend which direction you're going</p> <p>10 from the point of view of the hostler in control or engineer in</p> <p>11 control? And are you referring to main line movements or yard</p> <p>12 movements when you're saying that, do you know?</p> <p>13 A. Sir, you have given me so many different scenarios,</p> <p>14 examples, movements, and I am not sure exactly what you are</p> <p>15 looking -- I -- I am not sure exactly what you're looking for.</p> <p>16 Q. Here is my problem. You were the manager of safety</p> <p>17 for the whole Northwest Division. And all of these employees --</p> <p>18 the hostlers, the hostler helpers, the conductors and</p> <p>19 engineers -- they have to know all these rules just like you do</p> <p>20 off the top of their head. In fact, you're supposed to --</p> <p>21 you're on-duty right now, technically, correct?</p> <p>22 MR. MONTGOMERY: I move to strike the prior as</p> <p>23 argumentative; something of a diatribe given the total tenor of</p> <p>24 your voice.</p> <p>25 MR. JUNGBAUER: Oh, come on. I am being very</p>

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Foundation

<p style="text-align: right;">Page 66</p> <p>1 calm here. You know that, Tom.</p> <p>2 MR. MONTGOMERY: You are being relatively calm,</p> <p>3 but your voice inflexion is noted -- notable.</p> <p>4 Q. Are you on-duty right now, technically?</p> <p>5 MR. MONTGOMERY: Object to the form.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. You're supposed to have your GCOR and rule</p> <p>8 books available at all times when you're on-duty, technically,</p> <p>9 right?</p> <p>10 MR. MONTGOMERY: Objection to the form, and</p> <p>11 argumentative.</p> <p>12 A. I am not a train engine or yardman employee.</p> <p>13 Q. Are you, under the rules, supposed to have your rule</p> <p>14 books available when you're on-duty?</p> <p>15 A. As I stated, I am not a train engineman or yardman.</p> <p>16 Q. I am going to show you Rule 1.3.1 and ask you to read</p> <p>17 whether that applies only to train departments. I'll circle</p> <p>18 that for you. Please read that out loud.</p> <p>19 MR. MONTGOMERY: Where are we?</p> <p>20 MR. JUNGBAUER: The little bracketed part there.</p> <p>21 A. Rule 1.3.1?</p> <p>22 Q. Yeah. The part I have got the little bracket around</p> <p>23 there.</p> <p>24 A. "General Code of Operating Rules. Employees governed</p> <p>25 by these rules must have a current copy they can refer to while</p>	<p style="text-align: right;">Page 68</p> <p>1 here, so please move on.</p> <p>2 Q. My point -- okay. One of the other things that you</p> <p>3 said is a triggering event for a 72 hour report is violation of</p> <p>4 main line authority, correct?</p> <p>5 A. That is correct.</p> <p>6 Q. So if Ms. Sue Duff, after the accident involving my</p> <p>7 client, Ms. Wallis, happens to take a locomotive out onto the</p> <p>8 main line and violate main line authority, that would be</p> <p>9 something that should have a 72 hour rule, wouldn't it?</p> <p>10 MR. MONTGOMERY: Object to the --</p> <p>11 Q. A rule -- 72 hour reporting?</p> <p>12 MR. MONTGOMERY: Object to the form, foundation,</p> <p>13 incomplete hypothetical, calls for speculation, assumes facts</p> <p>14 not in evidence.</p> <p>15 A. So what are you -- what are you asking me?</p> <p>16 Q. I am asking this: If you as the safety manager were</p> <p>17 to have learned that Sue Duff or any other employee violated</p> <p>18 main line authority by taking a locomotive out onto the main</p> <p>19 line when they are not -- without proper authority, that</p> <p>20 incident should have triggered a 72 hour report, correct?</p> <p>21 MR. MONTGOMERY: Object to the form, calls for</p> <p>22 speculation, incomplete hypothetical.</p> <p>23 A. That is correct.</p> <p>24 Q. Did you ever do an analysis of a 72 hour report</p> <p>25 regarding Sue Duff taking a locomotive out onto the main line</p>
<p style="text-align: right;">Page 67</p> <p>1 on duty."</p> <p>2 Q. Okay. You're governed by those rules, correct?</p> <p>3 MR. MONTGOMERY: Object to the form. Hold on.</p> <p>4 I am going to keep hold of it so that she can have a current</p> <p>5 copy that she can refer to while on-duty. Go ahead.</p> <p>6 Mr. Jungbauer, if you find this area refreshing and fruitful,</p> <p>7 great.</p> <p>8 MR. JUNGBAUER: The reason it is refreshing and</p> <p>9 fruitful is, look, my client and other employees are judged all</p> <p>10 the time by rules that the manager of safety doesn't even know,</p> <p>11 and she is supposed to know them. That -- I find that unfair.</p> <p>12 MR. MONTGOMERY: Ask the question --</p> <p>13 Q. Do you know --</p> <p>14 MR. MONTGOMERY: -- all you want. You can ask</p> <p>15 me about the rules, but that's just preposterous. Move on.</p> <p>16 Q. Do you -- isn't it true that you're supposed to have</p> <p>17 the General Code of Rules -- of Operating Rules available if</p> <p>18 needed while on-duty, according to that rule?</p> <p>19 A. In my opinion, I am a supervisor in an office setting</p> <p>20 here for a deposition on a case that I know very little about,</p> <p>21 and I am not moving trains, equipment, nor am I required to get</p> <p>22 any main line authority, et cetera, that would make any rule in</p> <p>23 this book applicable to what I am doing right now. So no, I do</p> <p>24 not need the General Code of Operating Rules with me right now.</p> <p>25 MR. MONTGOMERY: That said, she has it right</p>	<p style="text-align: right;">Page 69</p> <p>1 without proper authority?</p> <p>2 A. Not that I can remember.</p> <p>3 Q. If Ms. Duff had or any other employee had, when you</p> <p>4 were manager of safety, taken a locomotive out onto -- without</p> <p>5 authority onto the main line, what type of analysis would you do</p> <p>6 to make sure that never happens again?</p> <p>7 MR. MONTGOMERY: Object to the form, incomplete</p> <p>8 hypothetical, calls for speculation, assumes facts not in</p> <p>9 evidence.</p> <p>10 A. My analysis was in regards to the actual physical</p> <p>11 report, not to the incident, nor making sure that the incident</p> <p>12 was not to occur again.</p> <p>13 MR. MONTGOMERY: Did I say "asked and answered"?</p> <p>14 If I missed it, I should have. Sorry.</p> <p>15 Q. Who in the Safety Department, if anyone, tries to</p> <p>16 determine when serious breaches occur such as violating main</p> <p>17 line authority? Doesn't anybody go back and see, was this</p> <p>18 person trained enough? Did he or she know the rules well enough</p> <p>19 so that it doesn't happen again? Does anybody ever do that in</p> <p>20 the Safety Department?</p> <p>21 MR. MONTGOMERY: Object to the form, incomplete</p> <p>22 hypothetical, calls for speculation, asked and answered.</p> <p>23 A. Can you -- can you ask me that again?</p> <p>24 Q. Yes. I will try to ask it a different way.</p> <p>25 A. Thank you.</p>

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Compound	1 Q. To your knowledge, does anyone in the Safety 2 Department go out and check after a rule violation such as 3 taking an engine out onto main line without proper authority -- 4 and you agree that's a very serious offense, especially if 5 Amtrak and the Metro line -- what do you call it? The Sounder, 6 are running through that kind of track? That would be a very 7 serious offense, wouldn't it? 8 MR. MONTGOMERY: Object to the form, calls for 9 speculation. 10 Q. Endangering public lives? 11 MR. MONTGOMERY: Object to the form. 12 A. "Yes" to that question. And the question, "Yes," that 13 is a very significant event. Taking equipment out on the main 14 line without authority is a significant event. 15 Q. All right. It's one of the most significant events 16 that can be analyzed, correct? 17 MR. MONTGOMERY: Object to the form. 18 A. It is a very significant event that can be observed. 19 Q. All right. Well, if it occurs, since it is such a 20 significant event, wouldn't -- is there anyone in the Safety 21 Department that would go back and look at the training and rules 22 compliance and testing on that individual to see if there is 23 something wrong with the training program or there is something 24 wrong with the individual that caused that serious event? 25 MR. MONTGOMERY: Object to the form, incomplete	1 A. No, I do not need the rule, but can you -- 2 Q. Yes. Are you aware of a rule that says that coupling 3 should be made at four miles an hour or less? 4 A. Yes. 5 Q. Okay. So how does a locomotive engineer -- 6 MR. MONTGOMERY: I think it says no more than 7 four -- sorry, sorry. I would have objected to foundation. 8 Didn't need to. But with that objection -- 9 MR. JUNGBAUER: I think that sounded right, four 10 or less. 11 MR. MONTGOMERY: I'm not sure. That's why I am 12 saying. 13 Q. It's four miles an hour or less, correct? Is that 14 your understanding? 15 MR. MONTGOMERY: It doesn't matter. 16 MR. JUNGBAUER: All right. Well, okay. If 17 you're saying it doesn't matter, counsel, I will move on. 18 Q. Here is my question. For whatever the speed is for 19 safe coupling, be it four miles an hour or less, or whatever the 20 speed is, how would you expect your locomotive engineer or 21 hostler to gauge the speed that the engine is being shoved at? 22 MR. MONTGOMERY: Object to the form, foundation, 23 calls for speculation, incomplete hypothetical. 24 A. You're asking me how I would expect a hostler to know? 25 Q. Yeah. How are they supposed to know what speed they	Fed. R. Evid. 402
Assumes facts not in evidence			
Fed. R. Evid. 402			
Incomplete hypothetical			
Calls for speculation			
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	1 hypothetical, calls for speculation, asked and answered. 2 A. I can answer the question in regards to my position, 3 but I cannot answer it for the rest of the Safety Department. 4 Q. All right. So as manager of safety for the Northwest 5 Division, if such an event occurs in your territory, be it a 6 main line violation or a violation of one of the eight-deadly 7 rules violations, do you as manager of safety ever look in to 8 see whether the person who committed those violations was 9 properly trained? 10 MR. MONTGOMERY: Object to the form, asked and 11 answered, incomplete hypothetical. 12 A. No. 13 Q. Okay. Another question for you. You are aware, 14 aren't you, that there are speed limits of safe coupling for 15 equipment in rail yards? 16 MR. MONTGOMERY: Object to the form. It assumes 17 facts not in evidence. 18 A. If you mean correct speeds in which cars can be kicked 19 and coupled, yes. 20 Q. Yes. Okay. If an engineer or a hostler in a 21 locomotive is shoving equipment to a joint, and a joint is 22 supposed to, under the rules, be made at less than four miles an 23 hour, or four miles an hour or less, would you agree to that? 24 MR. MONTGOMERY: Object to the form. 25 Q. Do you need the rule?	1 are going? 2 MR. MONTGOMERY: Object to the form, calls for 3 speculation, incomplete hypothetical. 4 Q. Do you know? 5 A. If the hostler was on the locomotive, they can utilize 6 the speedometer. 7 Q. Okay. Would you agree that's the safest and most 8 accurate way to gauge speed -- 9 MR. MONTGOMERY: Objection -- 10 Q. -- in a locomotive, for a hostler or a locomotive 11 engineer? 12 MR. MONTGOMERY: What's the question? What's 13 the safest and -- 14 MR. JUNGBAUER: Most -- what did I say? 15 (The last question was read.) 16 A. I do not know if I can make that conclusion. I have 17 never been a locomotive engineer. And as a manager of safety, 18 that was not my position. 19 Q. As a manager of safety, you want trains to couple at 20 safe speeds to comply with the rules as a general safety 21 concept. Would you agree with that? 22 MR. MONTGOMERY: Object to the form. 23 A. Yes. 24 Q. Okay. How would you want your employees to take the 25 safest course engaging their speed of their locomotive?	
Incomplete hypothetical			
No question			
Fed. R. Evid. 402			
Assumes facts not in evidence			



<p style="text-align: right;">Page 74</p> <p>1 MR. MONTGOMERY: Object to the form, incomplete</p> <p>2 hypothetical, calls for speculation.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So if a locomotive engineer or a hostler has a</p> <p>5 speedometer available to him or her to gauge speed, and we agree</p> <p>6 that that's the most accurate way of gauging speed, would you</p> <p>7 expect that person, in trying to comply with speed limits, to</p> <p>8 use the speedometer or just look out the window and count ties</p> <p>9 or try to guesstimate the speed of the train?</p> <p>10 MR. MONTGOMERY: Object to the form, incomplete</p> <p>11 hypothetical, calls for speculation, mischaracterizes earlier</p> <p>12 testimony, a little argumentative, asked and answered.</p> <p>13 A. I believe you're asking me a question that I cannot</p> <p>14 answer, given my position and experience.</p> <p>15 Q. All right. But as safety manager for the whole</p> <p>16 Northwest Division, you would want your employees to take the</p> <p>17 safest -- safe course if there is different options; if you've</p> <p>18 got a speedometer to look at. If there is nothing else to</p> <p>19 measure the speed at, would you want that person to at least</p> <p>20 glance at the speedometer once in awhile; see if they are in</p> <p>21 compliance with the rules?</p> <p>22 MR. MONTGOMERY: Object to the form, assumes</p> <p>23 facts not in evidence, incomplete hypothetical, foundation.</p> <p>24 A. It is not my job -- or, it was not my job as manager</p> <p>25 of safety to make a judgment decision for an employee on what</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Wouldn't you expect, common sense, for an engineer to</p> <p>2 use the speedometer in his or her locomotive as opposed just</p> <p>3 looking out the window and guessing on the speed?</p> <p>4 MR. MONTGOMERY: Object to the form, asked and</p> <p>5 answered, calls for speculation, incomplete hypothetical.</p> <p>6 A. As I stated before, I have not been a locomotive</p> <p>7 engineer, nor was it my position to make a judgment call on</p> <p>8 whether or not -- or, how that engineer operated that locomotive</p> <p>9 and what they felt was a safe speed.</p> <p>10 MR. JUNGBAUER: Off the record a second.</p> <p>11 (Short recess.)</p> <p>12 MR. JUNGBAUER: Back on the record.</p> <p>13 Q. According to the safety rules in GCOR, when train</p> <p>14 movements are being directed by hand signals, if the last signal</p> <p>15 given to a hostler in control of a locomotive or an engineer is</p> <p>16 three car lengths and no other signal is received, what is the</p> <p>17 obligation of the person operating the locomotive?</p> <p>18 MR. MONTGOMERY: Objection; incomplete</p> <p>19 hypothetical.</p> <p>20 A. With the information that you have given me would be</p> <p>21 to stop within half that car count.</p> <p>22 Q. Okay. And finally, during the time you were safety</p> <p>23 manager of the Northwest Division, how was the Northwest</p> <p>24 Division rated for injury performance compared to the other 12</p> <p>25 divisions? There are published numbers on that each year,</p>	<p>Fed. R. Evid. 402-403</p>
<p style="text-align: right;">Page 75</p> <p>1 they deem as a safe course or not.</p> <p>2 Q. Okay. Well, who -- doesn't the Safety Department do</p> <p>3 the analysis and testing and research to determine what is or is</p> <p>4 not safe or recommended for employees?</p> <p>5 MR. MONTGOMERY: Object to the form, foundation.</p> <p>6 A. I did the analysis and research and pulling of data on</p> <p>7 operations testing but not --</p> <p>8 THE WITNESS: Pardon me. Can you repeat his</p> <p>9 question.</p> <p>10 (The last question was read.)</p> <p>11 A. I can speak to the manager of safety position. I</p> <p>12 cannot speak to the Safety Department.</p> <p>13 Q. Okay. So again, for the whole Safety Department, in</p> <p>14 all the training that you have seen and the meetings you have</p> <p>15 been to, no one's ever talked about accident prevention from the</p> <p>16 Safety Department in a situation like this; is that correct?</p> <p>17 MR. MONTGOMERY: Object to the form.</p> <p>18 A. I don't understand your question.</p> <p>19 Q. When you drive -- you drive a car, correct?</p> <p>20 A. Yes.</p> <p>21 Q. If you drive down the road, and you're trying to</p> <p>22 comply with the speed limit, do you use your speedometer or just</p> <p>23 look out the window and try to guesstimate how fast you're</p> <p>24 going?</p> <p>25 A. I use my speedometer.</p>	<p style="text-align: right;">Page 77</p> <p>1 aren't there?</p> <p>2 A. Would you like me to answer both of those questions,</p> <p>3 or those statements?</p> <p>4 Q. Is it true you were bottom or second to the bottom of</p> <p>5 the whole pack?</p> <p>6 A. I cannot remember the exact number --</p> <p>7 Q. What do you remember?</p> <p>8 A. -- ranking we were.</p> <p>9 Q. What do you remember?</p> <p>10 A. I know that we were -- we had higher injury frequency</p> <p>11 ratios than other divisions, but I do not remember what ranking</p> <p>12 we were.</p> <p>13 Q. Wouldn't that be important to you to know if you were</p> <p>14 at the bottom or second to the bottom of the whole system of</p> <p>15 BNSF?</p> <p>16 MR. MONTGOMERY: Objection; argumentative,</p> <p>17 assumes facts not in evidence.</p> <p>18 A. (No response.)</p> <p>19 Q. Let me put it this way. Didn't Doug Jones complain to</p> <p>20 you while being at the bottom or second to the bottom of the</p> <p>21 whole system?</p> <p>22 MR. MONTGOMERY: Objection; assumes facts not in</p> <p>23 evidence.</p> <p>24 A. No.</p> <p>25 MR. JUNGBAUER: I have no further questions.</p>	<p>Argumentative</p> <p>Assumes facts not in evidence</p>



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MR. MONTGOMERY: I have no questions.  
 (The deposition was concluded,  
 adjourning at 11:13 a.m.)  
 (Signature was reserved.)

CERTIFICATE  
 STATE OF WASHINGTON )  
 ) ss  
 COUNTY OF PIERCE )

I, the undersigned officer of the Court, under my commission as a Notary Public in and for the State of Washington, hereby certify that the foregoing deposition upon oral examination of the witness named herein was taken stenographically before me and thereafter transcribed under my direction;

That the witness before examination was first duly sworn by me to testify truthfully; that the transcript of the deposition is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions, and exceptions of counsel made and taken at the time of the foregoing examination;

That I am neither attorney for, nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th of June 2010.

Lori K. Haworth  
 NOTARY PUBLIC in and for the State  
 of Washington, residing at Gig Harbor,  
 My commission expires 1/19/14.

STARKOVICH REPORTING SERVICES  
 (206) 323-0919

## AFFIDAVIT

STATE OF WASHINGTON )  
 ) ss.  
 COUNTY OF PIERCE )

I have read my within deposition, and the same is true and correct, save and except for changes and/or corrections, if any, as indicated by me on the "CORRECTIONS" flyleaf page hereof.

\_\_\_\_\_  
 ELIZABETH ANN JACKSON

SUBSCRIBED AND SWORN to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
 NOTARY PUBLIC in and for  
 the State of Washington,  
 residing at \_\_\_\_\_,  
 My commission expires \_\_\_\_\_.

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 June 7, 2010

To: Tom Montgomery  
 Montgomery Scarp MacDongall, PLLC  
 Seattle Tower, 27th Floor  
 1218 Third Avenue  
 Seattle, Washington 98101

Re: Wallis V. BNSF Railway Company  
 Deposition of: Elizabeth Ann Jackson  
 Date Taken: May 20, 2010  
 Cause No.: 2:08-CV-1711

PLEASE TAKE NOTICE THAT:  
 Enclosed are two forms: "Affidavit" and a "Correction Sheet."  
 Instruct the deponent to review the deposition, record any corrections over his signature on the Correction Sheet, and sign the Affidavit before a Notary Public. If there are corrections, please furnish other counsel with copies. Return both forms to this office for their inclusion in the original transcript. The transcript will be forwarded to the appropriate party

\_\_\_\_\_  
 Thank you for your assistance in obtaining signature.

By: Lori K. Haworth, RPR, CCR

cc: William G. Jungbauer

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